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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/382,275	08/25/1999	ROBERT A. VAN TASSEL	MEDIV1120-1	5006

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EXAMINER

PHAN, HIEU

ART UNIT PAPER NUMBER

3738

DATE MAILED: 02/11/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/382,275

Applicant(s)

VAN TASSEL ET AL.

Examiner

Hieu Phan

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) 3-29, 31-42, 46-57, 65-72 and 76-81 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 30, 43-45, 58-64 and 73-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 30, 43-45, 58-64 and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Yan (U.S. Patent 5,843,172).

Yan discloses a porous medicated stent (30) having plurality of interconnected microholes distributed throughout said stent body substantially uniformly along the entire length of said stent body; the microholes is adapted to promote an organized growth pattern of infiltrating cells, such as endothelial cells as is claimed (Abstract, figure 4, column 1 lines 12-20 and 62-67, column 2 lines 1-46, column 4 lines 12-31, column 5 lines 1-28 and column 6 lines 44-60).

Please note that Yan reads on the newly added limitation “uniformly along... entire” because the limitation as seen by the examiner to be the microholes are distributed along the length on the stent. Furthermore, the term “substantially” does not limit the microholes to be in a specific pattern or order. Therefore, the rejection under 35 U.S.C. 102(e) as being anticipated by Yan is proper.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 74 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yan (U.S. Patent 5,843,172) in view of Behl (U.S. Patent 5,078,736).

Yan is explained as before. Yan further lacking means for administering a stimulus to the cells growing on the stent.

Behl discloses a stent (10) with the method of implanting into the tubular organ of the subject an implant able stent body and providing a stimulus to the stent body (column 2 lines 38-63, column 3 lines 24-67, column 4 lines 3-6, column 5 lines 1-16 and lines 30-49 and figures 1-3). The advantage of having an external stimuli is to prevent stenosis of the patent's lumen by disrupting tissue growth.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Behl to modify the apparatus of Yan to have a means for administering a stimulus to the cells growing on the stent. The motivation for incorporating the feature of Behl into the apparatus of Yan is to prevent stenosis of the patent's lumen by disrupting tissue growth.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu Phan whose telephone number is 703-308-8969. The examiner can normally be reached on Monday-Friday from 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

Hieu Phan
Examiner
Art Unit 3738



CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700